Indiana Emergency Response Commission

News From the Agencies & the Commission on Risk Management Program
Indiana Department of Environmental Management . Indiana State Emergency Management Agency
Indiana Emergency Response Commission

What the Clean Air Act, Section 112(r) Means to Hoosiers: State & Local Governments, Private Businesses & Industries, & the General Public

Background

The Risk Management Program, which is found under Section 112(r) of the Clean Air Act (CAA), is a program for the prevention of accidental releases of chemicals, enacted by Congress in 1990. This program complements the Emergency Planning and Community Right-to-Know Act (EPCRA) as it makes information available to the public, including how accidental releases at facilities could affect communities. While EPCRA addresses the response to emergency when it occurs, CAA Section 112(r) addresses facility planning before an emergency occurs. The contrasting difference is based on the fact that emergency response may not adequately mitigate hazardous gases and liquids that rapidly become gases when released. Therefore, the Risk Management Program seeks to decrease the risk of airborne chemical accidents by instituting measures to prevent hazardous chemical releases.

To help educate state and local government and the regulated communities, a number of seminars on the Risk Management Program are being administered throughout the state. These seminars are cosponsored by the U.S. Environmental Protection Agency (EPA), the Indiana Department of Environmental Management (IDEM), the Indiana State Emergency Management Agency (SEMA), and the Indiana Emergency Response Commission (IERC).

Regulated Communities

The Risk Management Program addresses the management of 77 acutely toxic chemicals and 63 flammable gases and volatile liquids. In accordance with this rule, any facility managing (producing, processing, handling or storing) these identified regulated substances in amounts greater than or equal to the published thresholds must develop and implement the Risk Management Program. In addition, these facilities must submit a risk management plan (RMP) which addresses the regulated substances, associated hazards and preventative activities to EPA. The data elements of the RMP may also be requested by the Local Emergency Planning Committees (LEPCs).

As in many other programs, each regulated substance under the program has a designated threshold quantity (TQ). Generally, the TQs of the regulated substances

under the Risk Management Program are higher than that of EPCRA and are between 500 and 20,000 pounds.

Statutory Authority or Rules

Under CAA Section 112(r), EPA was mandated by Congress to promulgate regulations for preventing and detecting accidental releases of chemicals, and the response to releases that occur. EPA's final rule and publication on accidental release prevention on June 20, 1996, is found at 40 Code of Federal Regulations (CFR) Part 68. Under this regulation, facilities (stationary sources—including federal facilities) subject to the Risk Management Program must submit an RMP to a central location specified by EPA prior to June 21, 1999. For new facilities (established on/after June 21, 1999), compliance is mandated on the date when the regulated substance is first present. Additionally, compliance with the regulation is mandated 3 years after a new regulated substance is first listed.

What Is the Risk Management Program?

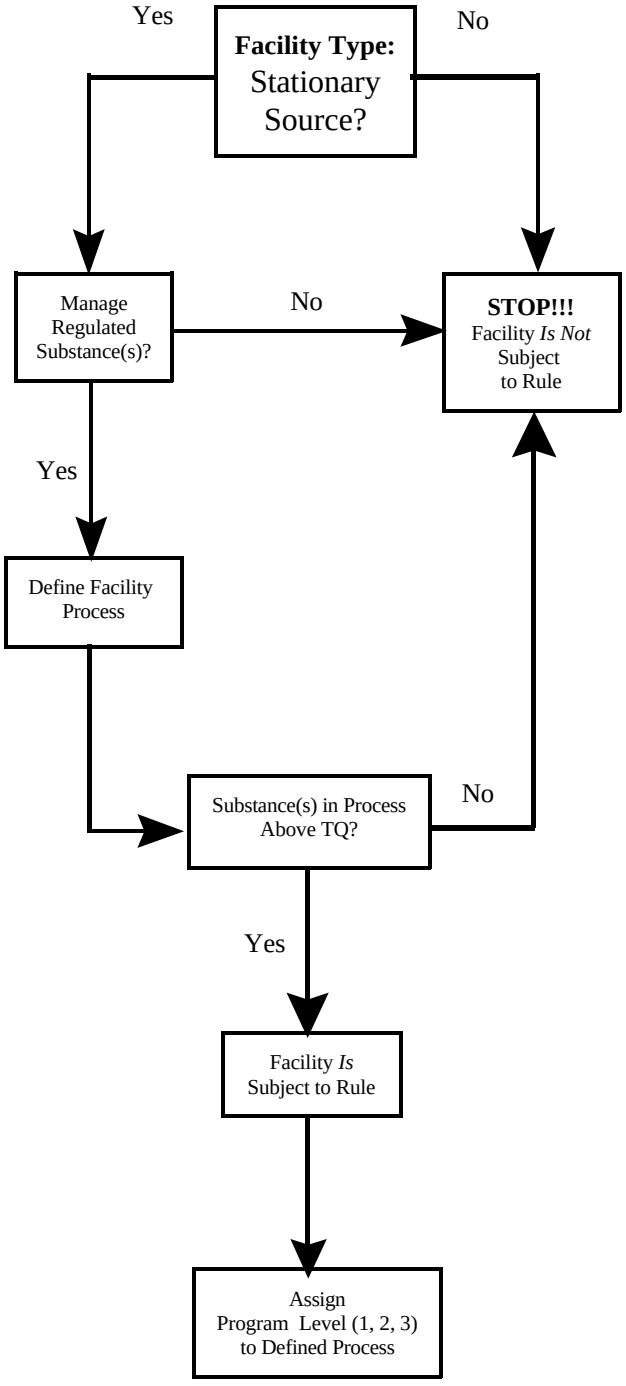
The Risk Management Program is process based and addresses the following areas of facility safety management for stationary sources:

A. Hazard assessment as it relates to the release of a regulated substance, including off-site consequence analyses
B. Programs to prevent accidental releases
C. Emergency action in response to accidental releases
D. Communication with federal, state and local government and the public.

The program establishes 3 program levels (levels of compliance) with different required elements for the regulated community, and it segregates facility processes ranging from low to high risk for the public. As a result, the program eligibility requirements are arranged as such:

- Program 1—Facilities without off-site accident history; with no public receptors (off-site consequence); and with emergency response coordinated with local emergency response organization
- Program 3—Facilities with Standard Industrial Classification (SIC) codes 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879 and 2911 (petroleum refineries, pulp mills); or subject to the Occupational Safety Hazard Administration (OSHA) Process Safety Management (PSM) standard
- Program 2—Mainly retail facilities and public drinking water or wastewater treatment plants (facilities not covered by Programs 1 or 3)

The following is a decision flow chart to assist facilities in the assignment of program levels:



Requirements of the Program Levels

The following is a graphic representation of the Risk Management program levels and their associated requirements of facility safety management:

Requirements	Programs		
Hazard Assessment	1	2	3
• Worst-case analysis	×	×	×
• Alternate release		×	×
• 5-year accident history	×	×	×
Management Program			
• Documentation		×	×
Prevention Program			
• Certify no added steps needed	×		
• Safety information		×	×
• Hazard review		×	×
• Operating procedure		×	×
• Training		×	×
• Maintenance/mechanical integrity		×	×
• Incident investigation		×	×
• Compliance audit		×	×
• Management of changes			×
• Pre-startup review			×
• Use of contractors			×
• Employee participation			×
• Hot work permits			×
Emergency Response Program			
• Coordinate with local responders			×
• Develop plan and program			×

RMP Compliance

A stationary source must conduct an off-site consequence analysis when developing an RMP under any program level. The guidance for conducting this analysis may be summarized as follows:

- Types of chemicals
- Worst-case scenario
- Alternative release scenario
- Off-site receptors (consequence)

The following is a graphic representation of the RMP requirements for each program level:

RMP Requirements	Programs		
Contents	1	2	3
• Executive summary	×	×	×
• Registration	×	×	×
• Worst-case data	×	×	×
• Alternative release data		×	×
• 5-year accident history	×	×	×
• Prevention program data		×	×
• Emergency response data		×	×
• Certification	×	×	×

RMP Reviews

EPA will play a central role in the collection and review of the RMPs, regardless of the delegation of authority to states to implement CAA Section 112(r). Since the RMPs will be submitted electronically, the plan review will be conducted by EPA's submission system. The review will mainly focus on the completeness of RMP data. EPA will manage the publically accessible database on the 64,000 chemical facilities throughout the country that must submit plans.

After the initial submission, facilities are required to review and update the RMPs submitted to EPA as follows:

- At least once every five years
- Within 6 months of a change that requires a revised process hazard analysis or hazard review

- Within 6 months of a change that requires a revised off-site consequence analysis
- Within 6 months of a change that alters the program level that applied to any covered process

The updated RMP must be resubmitted in the method, format and location specified by EPA.

If a stationary source is no longer subject to this rule, the facility must submit a revised registration to EPA within 6 months, indicating a status change.

Exemptions

Although the Risk Management Program addresses most extremely hazardous substances named under EPCRA at the preventative phase, there are, nonetheless, some associated exclusions and exceptions. These include, but are not limited to, the following:

- Materials in transport
- Ammonia held by farmers (as agricultural nutrients)
- Gasoline
- Naturally occurring hydrocarbon mixtures
- Explosives

Facilities may claim exempt status for electronically submitting their RMPs if they are able to show hardship. EPA will apply the hardship rule to facilities without access to a computer within 5 miles of the facility.

Misconceptions

There are no exemptions for regulated flammable substances used as fuel. If a facility process or stationary source contains a regulated substance such as propane, and the quantity is more than the TQ, the process is subject to Risk Management Program regulations. Although gasoline (and flammable substances it contains) to be used for internal combustion is exempt, flammable substances stored incident to mixture into gasoline are subject to this regulation.

Enforcement

Under CAA Section 113, EPA has the authority to bring administrative and judicial action against violators and also to order violators to comply with the Risk Management Program regulations. EPA may assess penalties up to $25,000 per day for each violation, but not exceeding $200,000 unless approved by the Department of Justice. In addition to the authority to bring administrative and judicial actions against violators, EPA may issue orders under CAA Section 112(r)(9) and CAA Section 303 when there is an imminent and substantial threat of an actual or potential
release.

Audits & Inspections

Facilities must certify that they have evaluated compliance with the applicable prevention program provisions at least once every 3 years to verify that established procedures and practices are adequate and are being followed. Implementing agencies may periodically audit RMPs to review adequacy and may require revisions to ensure compliance. The implementing agency is the state or local agency delegated to administer an accidental release prevention program. EPA is the default agency if no state or local agency is delegated and proposes to use 3rd party auditors to conduct inspections in such states.

Role of State Implementing Agencies

State and local agencies can implement all facets of the Risk Management Program, including inspection and enforcement, outreach and technical assistance, and any other requirements of RMPs. However, assignment of responsibilities to states in the realm of inspections and enforcement can be achieved only by states entering into a written agreement with EPA. Under this agreement, EPA will implement and enforce the verification and oversight requirements of the Risk Management Program. To date, no state agency in Indiana has requested and been granted delegation of authority by EPA as an implementing agency. However, EPA, IDEM and IERC are currently engaged in the outreach facet of CAA Section 112(r) by cosponsoring a series of risk management seminars throughout the state.

Other Plans

The state implementation plans (SIPs) address the control of substances for which there are national ambient air quality standards (NAAQSs). There is no relationship between the CAA Section 112(r) program and the SIPs. Except for sulfur dioxide listed in Section 112(r), the CAA bars EPA from listing substances under Section 112(r) if the substance has a NAAQS.

Guidance for the development of the Integrated Contingency Plan (ICP), also known as the “one plan,” was issued by the National Response Team in 1996. The guidance is intended to aid facilities, which are subject to multiple federal contingency planning requirements, in

developing an acceptable single plan. A plan developed using ICP guidance will meet the emergency response plan requirements of the CAA Section 112(r) rule.

Confidentiality

Facilities may claim some limited RMP data as confidential business information (CBI). Facilities will be required to submit to EPA both "sanitized" RMPs (with CBI data omitted) and "unsanitized" versions (with all data reported).

Benefits

State and local governments, private businesses and industries, and the general public will equally benefit from the successful implementation of the Risk Management Program. State and local governments will be able to readily identify areas of concern and effectively allocate limited resources. Private business and industries will have the opportunity to reevaluate the operational processes and implement structures for prevention and mitigation. Finally, the general public will be adequately informed on local risks and vulnerable population, and may then devise effective community emergency notification and response.

Additional Information

There are several publications and computer tools regarding the Risk Management Program available to the general public. These can be found at your local library or are accessible at various internet websites. The rules and regulations on the program are published in the Federal Register (FR) as follows:

- 59 FR 4478 (January 1, 1994)—1st Rule
- 61 FR 31668 (June 20, 1996)—Final Rule and Notice
- 62 FR 45130 (August 25, 1997)—Hydrogen Chloride Concentration Modification
- 62 FR 45134 (August 25, 1997)—Clarification of Rules
- 63 FR 640 (January 6, 1998)—Explosives, Gasoline and Hydrocarbon Exemptions

These FR documents can be accessed at this website:
www.access.gpo.gov/su_docs/aces/aces140.html.

Additional information on the program can be found at EPA's Chemical Emergency Preparedness and Prevention Office websites:
www.epa.gov/swercepp/rules/listrule.html
www.epa.gov/swercepp/pubs/caa-faqs.html.

The National Oceanic and Atmospheric Administration has also provided a free program called RMP*Comp. This program implements the off-site consequence analyses recommended by EPA and can be downloaded at www.nwn.noaa.gov/site/hazmat/chemaids/rmp/rmpinfo.html.

Contacts

Information regarding state and local government participation in, the functions of and progress on the Risk Management Program can be obtained at the following website addresses:
www.state.in.us/ierc
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